

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CAROLINE M. GARZA,

Plaintiff,

VS.

**CAROLYN W. COLVIN, ACTING
COMMISSIONER OF THE SOCIAL
SECURITY ADMINISTRATION,**

Defendant.

Civil Action No. SA-13-CA-44-XR(HJB)

ORDER

On this date, the Court considered the Report and Recommendation filed by the Magistrate Judge concerning Plaintiff's appeal of the Commissioner's decision to deny her disability insurance benefits. After careful consideration, the Court accepts the Magistrate Judge's recommendation to affirm the Commissioner's denial of benefits.

I. Background

Plaintiff Caroline M. Garza seeks review and reversal of the administrative denial of her application for benefits. Plaintiff filed an application for disability insurance benefits on July 28, 2010. Plaintiff claims that she has been diagnosed with major depressive disorder and bipolar disorder, which prevent her from working and engaging in substantial gainful

activity. The Administrative Law Judge (“ALJ”) held a hearing on March 22, 2012. On June 29, 2012, the ALJ issued a decision concluding that Plaintiff is not disabled within the meaning of the Social Security Act. The SSA Appeals Council denied review of the ALJ’s decision, and the ALJ’s decision became the final decision of the Commissioner for the purpose of the Court’s review pursuant to 42 U.S.C. § 405(g).

Plaintiff filed her complaint on January 17, 2013. Defendant filed an answer, and the case was referred to Magistrate Judge Henry Bemporad for a report and recommendation. Both parties filed briefs.

On July 31, 2013, Magistrate Judge Bemporad issued a report and recommendation to this Court recommending the decision be affirmed. Docket no. 25. The report and recommendation was served on Plaintiff’s counsel on July 31 by CM/ECF. No objections have been filed, and the time for doing so has expired. Because the Report and Recommendation has not been objected to, the Court need not conduct a *de novo* review, but will review the Magistrate Judge’s report and recommended disposition to determine whether it is clearly erroneous.

II. Analysis

A. Plaintiff’s Claims

The ALJ found that Plaintiff has the following severe impairments:

affective disorder alternatively diagnosed as major depressive disorder and bipolar disorder, and a personality disorder. The ALJ also found that Plaintiff could not do her past work. However, the ALJ found that Plaintiff was not disabled because there was work that she could perform.

Plaintiff alleges that (1) the ALJ erred in finding that Plaintiff's RFC would allow her to perform work on a "regular and continuing" or sustained basis or that she could make a successful adjustment to other work despite limitations from her mental impairments and uncontroverted vocational expert testimony that opined that she could not; (2) the ALJ erred in failing to determine that the occupational basis was not substantially eroded considering Plaintiff's severe mental impairments and advanced age; (3) the ALJ failed to give proper weight and due consideration to Licensed Professional Counselor Intern Mary Kinard, who provided the longest, most recent and consistent health care treatment to Plaintiff than any other health care provider; and (4) the ALJ erred as a matter of law in evaluating Plaintiff's subjective complaints in failing to apply the regulatory factors set forth in SSR 96-7p and 20 C.F.R. § 404.1529.

B. The Magistrate Judge's Report and Recommendation

Magistrate Judge Bemporad thoroughly reviewed the parties' arguments regarding the Commission's decision. In his report, Magistrate Judge Bemporad

concluded: that the ALJ followed SSR 06-03p and properly weighed and considered Mary Kinard's opinion given the other objective medical evidence in the case; the ALJ's determination of Plaintiff's RFC was appropriate and was consistent with the vocational expert's testimony to the extent the ALJ had discretion to reject the expert's opinion based on Kinard's evaluation and accept the opinion based on the hypothetical he posed, which was consistent with the objective medical evidence in the record; the ALJ appropriately complied with SSR 85-15 and substantial evidence supports the decision regarding Plaintiff's occupational basis; and the ALJ appropriately evaluated Plaintiff's subjective complaints and his credibility determination is supported by substantial evidence.

C. Review

The Court has reviewed the file and the report and recommendation, and finds Magistrate Judge Bemporad's recommendation to be neither clearly erroneous nor contrary to law. The ALJ followed the proper legal standards and the decision is supported by substantial evidence. Accordingly, the Court accepts the recommendation, and affirms the Commissioner's decision denying benefits.


Conclusion

For the foregoing reasons, the recommendation of the Magistrate Judge to affirm is ACCEPTED and the decision of the Commissioner denying benefits

is AFFIRMED. The Clerk is instructed to issue a final judgment and to close this case.

It is so ORDERED.

SIGNED this 2nd day of October, 2013.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', is written over a horizontal line.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE